THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 7568 OF 1999

Dated 28th June, 2007

Between:

Sd. Shanawaz

…Petitioner

And

The Executive Engineer, Nellore,
Central Division, Nellore and others.

…Respondents.

ORAL ORDER:

In this writ petition, the petitioner seeks a direction by way of mandamus to the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's shop property bearing Dr.No.1044, situated at Aravind Nagar, Nellore and a declaration that the action of the respondents in taking steps to demolish the petitioner's shop as illegal and arbitrary.

In the affidavit filed in support of the writ petition, it is stated that the petitioner is the owner of the commercial property covered by Door No.1044, situated at Aravind Nagar, Nellore Town, where he is running a Tea Stall. It is stated that he had purchased the said property from the earlier owner one B.Laxmi Devi by registered sale-deed dated 23.12.1996. It is further stated that a Nala was passing by the side of the said shop and as the same was producing foul smell due to passage of drainage water resulting in health problems to the family members of the petitioner as also the general public, on the request made by petitioner to lay RCC slab on the canal, he was accorded permission for laying RCC slab along with other adjacent neighbouring shop owners. Accordingly, by spending huge amount, he laid the slab.

It is the case of the petitioner that though the said property is his private property, under the guise of road widening at the instance of his rival business people by name, Sayyad Khadar Basha, Abu Basha, Chand Basha etc., the respondents are taking steps for demolition.

In spite of several opportunities, no counter affidavit was filed. This court by order dated 17.4.2000 directed the respondents not to

interfere with the possession of the petitioner without recourse to due process of law. The said order passed on 17.4.2000 continued all along. Even by this time, no counter affidavit is filed by any of the respondents.

As it is pleaded that the subject property is private property of the petitioner and no steps have been taken for taking the said property by acquisition for using any public purpose, I dispose of the writ petition with a direction to the respondents not to deprive the petitioner of his property as otherwise than by due process of law. However, it is made clear that if the said property is required for any public purpose, or, is encroached upon by the petitioner on the road margin, it is open for the respondents to issue prior notice and take steps in accordance with law.

There shall be no order as to costs.

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28-6-2007

R.SUBHASH REDDY, J.

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